

BEFORE THE
STATE OF WASHINGTON
POLLUTION CONTROL HEARINGS BOARD

IN THE MATTER OF
FORD CEDAR PRODUCTS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 78-218

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of the issuance of four civil penalties for the alleged violation of Sections 9.04, 9.11(a), and 8.05(1) of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith and David Akana (presiding), at a formal hearing on February 6, 1980, in Everett.

Appellant was represented by its attorney, Lewis Hutchison; respondent was represented by its attorney, Keith D. McGoffin.

Having the heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant, Ford Cedar Products, Inc., owns or controls a shake
4 mill located upon certain property in Sultan, Washington. As a part
5 of its operation, cedar wood wastes are generated. These wastes are
6 dumped near appellant's shake mill on two to three acres of his
7 property. In 1975, appellant was notified by Snohomish County that he
8 was operating an illegal landfill. In 1976, he was issued a permit
9 for a woodwaste landfill approximately one-half mile away, and was
10 directed to remove all waste material from the mill site.

11 II

12 On August 2, 1977, at about 3:42 p.m., respondent's inspector
13 received a complaint of air pollution relating to appellant's site.
14 On the following day, the inspector visited the site and observed a
15 large pile of woodwaste, approximately 1/2 acre in area and 3 feet
16 high, smoldering near the mill. Although it appeared that attempts
17 had been made to contain or extinguish the fire, no fire equipment was
18 observed at the site.

19 III

20 On August 4, 1977, the inspector returned to the site at
21 11:00 a.m. and noted that the fire was still smoldering. He returned
22 to the area at 3:45 p.m. to investigate complaints from nearby
23 residents. He observed cinders on the complainant's property.
24 Appellant was the only known source of such cinders during this time
25 period.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 IV

2 For the foregoing events, appellant was given Notices of Violation
3 for the alleged violation of Sections 8.05(1), 9.11(a), and 9.04 of
4 respondent's Regulation I on August 4, 1977, and Section 8.05(1) on
5 August 3, 1977. From these notices of violation followed four \$250
6 civil penalties which were appealed to this Board.

7 V

8 Before and during the fire, the weather was hot and the fire
9 danger was high.

10 Appellant did not ignite the fire; the fire started in an area
11 where no activity was being conducted.

12 After the fire started, neither the appellant nor the Sultan Fire
13 Department could extinguish it; it could only be controlled, given the
4 personnel and equipment made available by the Department.

15 VI

16 On April 27, 1976, appellant was ordered by Snohomish County to
17 stop using the area adjacent to its shake mill as a woodwaste landfill.

18 After the instant fire, appellant eventually cleared the site to
19 the satisfaction of the Fire Marshal.

20 VII

21 Appellant did not possess a permit for the instant fire from
22 respondent.

23 VIII

24 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
25 certified of its Regulation I and amendments thereto, which are
26 noticed.

1 Section 8.05(1) makes it unlawful for any person to cause or allow
2 an outdoor fire other than land clearing or residential burning
3 without prior written approval of respondent.

4 Section 9.04 makes it unlawful for any person to cause or allow
5 the discharge of particulate matter, here cinders, upon the real
6 property of others.

7 Section 9.11(a) makes it unlawful for any person to cause or
8 permit the emission of an air contaminant if the air contaminant
9 causes detriment to the health, safety or welfare of any person, or
10 causes damage to property or business.

11 Section 3.29 provides for a civil penalty of up to \$250 per day for
12 each violation of Regulation I.

13 IX

14 Any Conclusion of Law which should be deemed a Finding of Fact is
15 hereby adopted as such.

16 From these Findings the Board makes these

17 CONCLUSIONS OF LAW

18 I

19 Appellant has experienced a fire at an earlier date at the site.
20 He had knowledge of the flammable nature of cedar woodwaste. His act
21 of maintaining large amounts of such flammable material next to the
22 shake mill as was done in this case created a condition which did as
23 much to bring about the fire as adding the spark. We conclude that
24 appellant caused or allowed the fire at its site on August 3 and 4,
25 and violated Sections 8.05(1) and 9.04 as alleged. The three \$250
26 civil penalties which were assessed, therefor, should be affirmed.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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II

Respondent did not show that appellant violated Section 9.11(a) as alleged. Accordingly, the \$250 civil penalty for such should be vacated.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board issues this

ORDER

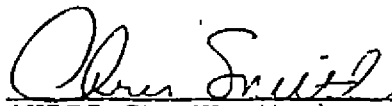
1. The \$250 civil penalties assessed for the violation of Section 8.05(6) on August 3, and 4, 1977, are affirmed.

2. The \$250 civil penalty assessed for the violation of Section 9.04 on August 4, 1977, is affirmed.

3. The \$250 civil penalty assessed for the violation of Section 9.11(a) on August 4, 1977 is vacated.

DATED this 17th day of March, 1980.

POLLUTION CONTROL HEARINGS BOARD


CHRIS SMITH, Member


DAVID AKANA, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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Mr. Keith D. McGoffin
Rovai, McGoffin and Turner
818 South Yakima Avenue
Tacoma, WA 98405

Ford Cedar Products, Inc.
P.O. Box 302
Sultan, WA 98294

Trish Ryan
TRISH RYAN
POLLUTION CONTROL HEARINGS BOARD